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Personal Justice Denied

REPORT OF THE
COMMISSION ON WARTIME RELOCATION
AND INTERNMENT OF CIVILIANS

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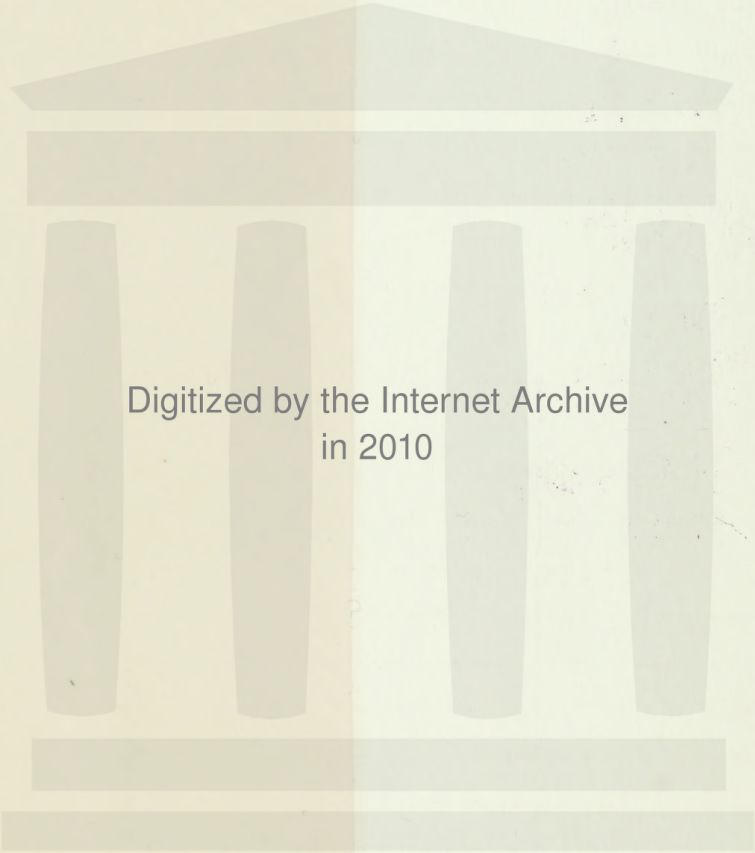

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THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

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Personal Justice Denied
Part 2: Recommendations

REPORT OF THE
COMMISSION ON WARTIME RELOCATION
AND INTERNMENT OF CIVILIANS

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From the Chair

In accordance with Public Law 96–317 and on behalf of the members of the Commission on Wartime Relocation and Internment of Civilians, I am submitting Part II of our report, *Personal Justice Denied*, to the Congress of the United States. Part II contains the Commission's recommendations for remedial actions.

The members of the Commission join me in extending a very special tribute and our unending gratitude to the Special Counsel, Angus Macbeth. Angus accepted and executed the difficult role of organizing our activities and our complex tasks with great skill and enthusiasm. His goal was to make sure our reports would be complete, accurate and reflect the views of all Commission members. He achieved that goal, doing so with his usual but truly unusual talent for making the impossible seem possible and the complex, logical and understandable. Throughout, he insisted on excellence and consistently acted with intelligence, wit and great good sense. The job simply could not have been done without him.

Again, the Commission joins me in thanking other members of the staff identified in Part I who have worked with us from the beginning. We were fortunate to have found these talented and dedicated people, who contributed so much to our effort.

Many others contributed to the Commission's tasks in essential ways. Several members of Congress and their staffs, the staff of the General Services Administration and the Office of Management and Budget were helpful and supportive along the way. And, as Chair, I personally could not have functioned without the tireless assistance of Betsy Bellows of Wald, Harkrader & Ross.

Finally, I would like to thank the members of the Commission for their assistance, support, insight and wisdom throughout the two years. I am honored to have served with these distinguished colleagues from whom I learned so much. Their friendships enriched my life and I will miss them.

—Joan Z. Bernstein

Recommendations

In 1980 Congress established a bipartisan Commission on Wartime Relocation and Internment of Civilians, and directed it to:

1. review the facts and circumstances surrounding Executive Order Numbered 9066, issued February 19, 1942, and the impact of such Executive Order on American citizens and permanent resident aliens.

2. review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands; and

3. recommend appropriate remedies.

The Commission fulfilled the first two mandates by submitting to Congress in February 1983 a unanimous report, *Personal Justice Denied*, which extensively reviews the history and circumstances of the fateful decisions to exclude, remove and then to detain Japanese Americans and Japanese resident aliens from the West Coast, as well as the treatment of Aleuts during World War

II. * The remedies which the Commission recommends in this second and final part of its report are based upon the conclusions of that report as well as upon further studies done for the Commission, particularly an analysis of the economic impact of exclusion and detention.

In considering recommendations, the Congress and the nation therefore must bear in mind the Commission's basic factual findings about the wartime treatment of American citizens of Japanese ancestry and resident Japanese aliens, as well as of the people of the Aleutian Islands. A brief review of the major findings of *Personal Justice Denied* is followed by the Commission's recommendations.

I. AMERICAN CITIZENS OF JAPANESE ANCESTRY AND RESIDENT JAPANESE ALIENS

On February 19, 1942, ten weeks after the Pearl Harbor attack, President Franklin D. Roosevelt signed Executive Order 9066, empowering the Secretary of War and the military commanders to whom he delegated authority to exclude any and all persons, citizens and aliens, from designated areas in order to secure national defense objectives against sabotage, espionage and fifth column activity. Shortly thereafter, on the alleged basis of military necessity, all American citizens of Japanese descent and all Japanese resident aliens were excluded from the West Coast. A small number—5,000 to 10,000—were removed from the West Coast and placed in "relocation centers"—bleak barrack camps in desolate areas of the Western states, guarded by military police.

**Personal Justice Denied* (467 pp., $8.50) is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; Stock Number 052-003-00897-1. Telephone orders may be placed by calling (202) 783-3238. The report also discusses the removal from Hawaii of 1,875 residents of Japanese ancestry; the internment of Germans and Italians from various parts of the country as well as the exclusion of a small number of German American and Italian American citizens from particular areas pursuant to Executive Order 9066. Japanese Americans were also excluded from Alaska.

People sent to relocation centers were permitted to leave only after a loyalty review on terms set, in consultation with the military, by the War Relocation Authority, the civilian agency that ran the camps. During the course of the war, approximately 35,000 evacuees were allowed to leave the camps to join the Army, attend college outside the West Coast or take whatever private employment might be available to them. When the exclusion of Japanese Americans and resident aliens from the West Coast was ended in December 1944, about 85,000 people remained in government custody.

This policy of exclusion, removal and detention was carried out without individual review, and prolonged exclusion continued without adequate regard to evacuees' demonstrated loyalty to the United States. Congress, fully aware of the policy of removal and detention, supported it by enacting a federal statute which made criminal the violation of orders issued pursuant to Executive Order 9066. The United States Supreme Court also upheld exclusion in the context of war, but struck down the detention of loyal American citizens on the ground that this did not rest on statutory authority. All this was done despite the fact that no documented acts of espionage, sabotage or fifth column activity were shown to have been committed by any identifiable American citizen of Japanese ancestry or resident Japanese alien on the West Coast. *

Officials took far more individualized, selective action against enemy aliens of other nationalities. No mass exclusion or detention, in any part of the country, was ordered against American citizens of German or Italian descent. The ethnic Japanese suffered a unique injustice during these years.

The Commission has examined the central events which created this history, especially the decisions that proved to be turning points in the flow of events.

The federal government contended that its decision to exclude ethnic Japanese from the West Coast was justified by "military necessity." Careful review of the facts by the Commission has not revealed any security or military threat from the West Coast ethnic Japanese in 1942. The record does not support the claim that military necessity justified the exclusion of the ethnic Japanese from

*Recent press reports take issue with this conclusion by the Commission; this is addressed separately in an addendum to another Commission volume, *Papers for the Commission*.

the West Coast, with the consequent loss of property and personal liberty.

The decision to detain followed indirectly from the alleged military necessity for exclusion. No one offered a direct military justification for detention; the War Relocation Authority adopted detention primarily in reaction to the vocal popular feeling that people whom the government considered too great a threat to remain at liberty on the West Coast should not live freely elsewhere. The WRA contended that the initial detention in relocation centers was necessary for the evacuees' safety, and that controls on departure would assure that the ethnic Japanese escaped mistreatment by other Americans when they left the camps. It follows, however, from the Commission's conclusion that no military necessity justified the exclusion that there was no basis for this detention.

In early 1943, the government proposed to end detention, but not exclusion, through a loyalty review program designed to open the gates of the camps for the loyal, particularly those who volunteered to join the Army. This program represented a compromise between those who believed exclusion was no longer necessary and those who would prolong it. It gave some ethnic Japanese an opportunity to demonstrate loyalty to the United States most graphically—on the battlefield. Particularly after detention, such means of proving loyalty should not have been necessary. Yet distinguished service of Japanese Americans both in Europe and the Pacific had a profound impact in fostering postwar acceptance of the ethnic Japanese in America. It opened the gates of the camps and began to reestablish normal life for some people. But it did not grant the presumption of loyalty to all American citizens of Japanese descent. With no apparent rationale or justification, the loyalty review program failed to end exclusion from the West Coast of those who were found loyal.

By the spring of 1943, the highest civilian and military officials of the War Department had concluded that, after the loyalty review, military requirements no longer justified excluding American citizens of Japanese descent or resident aliens from the West Coast. The exclusion was imposed through orders based on the Secretary of War's authority; nevertheless, the War Department did not act to lift the ban. The extent to which these views were communicated to the White House is unclear, but twelve months later, in May 1944, a recommendation to end exclusion was put

before the President at a Cabinet meeting. Nevertheless, exclusion ended only after the Presidential election in November 1944. No plausible reason connected to wartime security supports this delay in allowing the ethnic Japanese to return to their homes, jobs and businesses—although the delay meant, as a practical matter, that most evacuees continued to be confined in relocation camps for an additional eighteen months.

In sum, Executive Order 9066 was not justified by military necessity, and the decisions that followed from it—exclusion, detention, the ending of detention and the ending of exclusion—were not founded upon military considerations. The broad historical causes that shaped these decisions were race prejudice, war hysteria and a failure of political leadership. Widespread ignorance about Americans of Japanese descent contributed to a policy conceived in haste and executed in an atmosphere of fear and anger at Japan. A grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II.

The excluded people suffered enormous damages and losses, both material and intangible. To the disastrous loss of farms, businesses and homes must be added the disruption for many years of careers and professional lives, as well as the long-term loss of income, earnings and opportunity. Japanese American participation in the postwar boom was delayed and damaged by the losses of valuable land and growing enterprises on the West Coast which they sustained in 1942. An analysis of the economic losses suffered as a consequence of the exclusion and detention was performed for the Commission, Congress having extended the Commission's life in large measure to permit such a study. It is estimated that, as a result of the exclusion and detention, in 1945 dollars the ethnic Japanese lost between $108 and $164 million in income and between $41 and $206 million in property for which no compensation was made after the war under the terms of the Japanese-American Evacuation Claims Act. Adjusting these figures to account for inflation alone, the total losses of income and property fall between $810 million and $2 billion in 1983 dollars. It has not been possible to calculate the effects upon human capital of lost education, job training and the like.

Less tangibly, the ethnic Japanese suffered the injury of unjustified stigma that marked the excluded. There were physical illnesses and injuries directly related to detention, but the deprivation of liberty is no less injurious because it wounds the spirit rather than the body. Evacuation and relocation brought psychological pain, and the weakening of a traditionally strong family structure under pressure of separation and camp conditions. No price can be placed on these deprivations.

These facts present the Commission with a complex problem of great magnitude to which there is no ready or satisfactory answer. No amount of money can fully compensate the excluded people for their losses and sufferings. Two and a half years behind the barbed-wire of a relocation camp, branded potentially disloyal because of one's ethnicity alone—these injustices cannot neatly be translated into dollars and cents. Some find such an attempt in itself a means of minimizing the enormity of these events in a constitutional republic. History cannot be undone; anything we do now must inevitably be an expression of regret and an affirmation of our better values as a nation, not an accounting which balances or erases the events of the war. That is now beyond anyone's power.

It is well within our power, however, to provide remedies for violations of our own laws and principles. This is one important reason for the several forms of redress recommended below. Another is that our nation's ability to honor democratic values even in times of stress depends largely upon our collective memory of lapses from our constitutional commitment to liberty and due process. Nations that forget or ignore injustices are more likely to repeat them.

The governmental decisions of 1942 were not the work of a few men driven by animus, but decisions supported or accepted by public servants from nearly every part of the political spectrum. Nor did sustained or vocal opposition come from the American public. The wartime events produced an unjust result that visited great suffering upon an entire group of citizens, and upon resident aliens whom the Constitution also protects. While we do not analogize these events to the Holocaust—for the detention camps were not death camps—this is hardly cause for comfort in a democracy, even forty years later.

The belief that we Americans are exceptional often threatens our freedom by allowing us to look complacently at evil-doing else-

where and to insist that "It can't happen here." Recalling the events of exclusion and detention, ensuring that later generations of Americans know this history, is critical immunization against infection by the virus of prejudice and the emotion of wartime struggle. "It did happen here" is a message that must be transmitted, not as an exercise in self-laceration but as an admonition for the future. Among our strengths as a nation is our willingness to acknowledge imperfection as well as to struggle for a more just society. It is in a spirit of continuing that struggle that the Commission recommends several forms of redress.

In proposing remedial measures, the Commission makes its recommendations in light of a history of postwar actions by federal, state and local governments to recognize and partially to redress the wrongs that were done:

- In 1948, Congress passed the Japanese-American Evacuation Claims Act; this gave persons of Japanese ancestry the right to claim from the government real and personal property losses that occurred as a consequence of the exclusion and evacuation. The Act did not allow claims for lost income or for pain and suffering. Approximately $37 million was paid in claims, an amount far below what would have been full and fair compensation for actual economic losses. Awards were low because elaborate proof of loss was required, and incentives for settling claims below their full value were built into the Act.
- In 1972, the Social Security Act was amended so that Japanese Americans over the age of eighteen would be deemed to have earned and contributed to the Social Security system during their detention.
- In 1978, the federal civil service retirement provisions were amended to allow the Japanese Americans civil service retirement credit for time spent in detention after the age of eighteen.
- In four instances, former government employees have received a measure of compensation. In 1982, the State of California enacted a statute permitting the few thousand Japanese Americans in the civil service, who were dismissed or who resigned during the war because of their Japanese ethnicity, to claim $5,000 as reparation. In late 1982, the Los Angeles County Board of Supervisors enacted a similar program for the Japanese Americans it employed in 1942. San Francisco and the State of Washington recently passed statutes providing similar relief to former employees who were excluded.

Each measure acknowledges to some degree the wrongs inflicted during the war upon the ethnic Japanese. None can fully compensate or, indeed, make the group whole again.

The Commission makes the following recommendations for remedies in several forms as an act of national apology.

1. The Commission recommends that Congress pass a joint resolution, to be signed by the President, which recognizes that a grave injustice was done and offers the apologies of the nation for the acts of exclusion, removal and detention.

2. The Commission recommends that the President pardon those who were convicted of violating the statutes imposing a curfew on American citizens on the basis of their ethnicity and requiring the ethnic Japanese to leave designated areas of the West Coast or to report to assembly centers. The Commission further recommends that the Department of Justice review other wartime convictions of the ethnic Japanese and recommend to the President that he pardon those whose offenses were grounded in a refusal to accept treatment that discriminated among citizens on the basis of race or ethnicity. Both recommendations are made without prejudice to cases currently before the courts.

3. The Commission recommends that Congress direct the Executive agencies to which Japanese Americans* may apply for the restitution of positions, status or entitlements lost in whole or in part because of acts or events between December 1941 and 1945 to review such applications with liberality, giving full consideration to the historical findings of this Commission. For example, the responsible divisions of the Department of Defense should be instructed to review cases of less than honorable discharge of Japanese Americans from the armed services during World War II over which disputes remain, and the Secretary of Health and Human Services should be directed to instruct the Commissioner of Social

*This recommendation and those that follow apply to all ethnic Japanese excluded or detained during World War II without regard to the explicit legal authority under which the government acted.

Security to review any remaining complaints of inequity in entitlements due to the wartime detention.

4. The Commission recommends that Congress demonstrate official recognition of the injustice done to American citizens of Japanese ancestry and Japanese resident aliens during the Second World War, and that it recognize the nation's need to make redress for these events, by appropriating monies to establish a special foundation.

The Commissioners all believe a fund for educational and humanitarian purposes related to the wartime events is appropriate, and all agree that no fund would be sufficient to make whole again the lives damaged by the exclusion and detention. The Commissioners agree that such a fund appropriately addresses an injustice suffered by an entire ethnic group, as distinguished from individual deprivations.

Such a fund should sponsor research and public educational activities so that the events which were the subject of this inquiry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood. A nation which wishes to remain just to its citizens must not forget its lapses. The recommended foundation might appropriately fund comparative studies of similar civil liberties abuses or of the effect upon particular groups of racial prejudice embodied by government action in times of national stress; for example, the fund's public educational activity might include preparing and distributing the Commission's findings about these events to textbook publishers, educators and libraries.

5. The Commissioners, with the exception of Congressman Lungren, recommend that Congress establish a fund which will provide personal redress to those who were excluded, as well as serve the purposes set out in Recommendation 4. Appropriations of $1.5 billion should be made to the fund over a reasonable period to be determined by Congress. This fund should be used, first, to provide a one-time per capita compensatory payment of $20,000 to each of the approximately 60,000 surviving persons excluded from their places of residence pursuant to Executive Order 9066[1]. The

[1]Commissioner William M. Marutani formally renounces any monetary recompense either direct or indirect.

burden should be on the government to locate survivors, without requiring any application for payment, and payments should be made to the oldest survivors first. After per capita payments, the remainder of the fund should be used for the public educational purposes discussed in Recommendation 4 as well as for the general welfare of the Japanese American community. This should be accomplished by grants for purposes such as aid to the elderly and scholarships for education, weighing, where appropriate, the effect of the exclusion and detention on the descendants of those who were detained. Individual payments in compensation for loss or damage should not be made.

The fund should be administered by a Board, the majority of whose members are Americans of Japanese descent appointed by the President and confirmed by the Senate. The compensation of members of the Board should be limited to their expenses and per diem payments at accepted governmental rates.

II. THE ALEUTS[2]

When the Japanese attacked and captured the two westernmost Aleutian islands, Kiska and Attu, the military evacuated the Aleuts from the Pribilofs and from many islands in the Aleutian chain. This action was justified as a measure to protect civilians in an active theatre of war. The Commission found no persuasive showing that evacuation of the Aleuts was motivated by racism or that it was undertaken for any reason but their safety. The evacuation of the Aleuts was a rational wartime measure taken to safeguard them.

Following the evacuation, however, the approximately 900 evacuated Aleuts suffered at the hands of the government in two distinct ways. First, no plan had been developed to care for them by the civilian agencies in the Department of the Interior which had responsibility for Aleut interests. As a result, they were transported to southeastern Alaska and housed in camps set up typically at abandoned gold mines or canneries. Conditions varied among camps, but housing, sanitation and eating conditions in most were

[2]Commissioner Joan Z. Bernstein recuses herself from participation in recommending remedies for the Aleuts because of a potential conflict of interest involving representation by the law firm of which she is a member.

deplorable. Medical care was inadequate; illness and disease were widespread. While exact numbers are not available, it appears that approximately ten percent of the Aleut evacuees died during the two to three years they spent in the camps.

This treatment clearly failed to meet the government's responsibility to those under its care.

Second, on returning to their villages, the Aleuts found that many houses and churches had been vandalized by the U.S. military. Houses, churches, furniture, boats and fishing gear were missing, damaged or destroyed. Devout followers of the Russian Orthodox faith, the Aleuts had treasured religious icons from czarist Russia and other family heirlooms; now gone, they were a significant loss spiritually as well as materially. Insofar as the government attempted to make good some of these losses, it typically replaced Aleut possessions with inferior goods, and the losses were never remedied adequately.

The Fifth Amendment commits the government to compensating for property it takes. Appropriate, full compensation clearly has not been made in the case of the Aleuts.

In addition, the island of Attu, now used at least in part by the Coast Guard, was never returned to the Aleuts after the Second World War. There also remain in the Aleutians large quantities of wartime debris, much of it hazardous. A great deal, but not all, of this material rests on federally-owned land.

No effective system of records exists by which to estimate Aleut property losses exactly; certainly there is no readily available means of putting a dollar value upon the suffering and death brought to Aleuts in the camps. The Commissioners agree that a claims procedure would not be an effective method of compensation. Therefore, the sums included in the Commission's recommendations were chosen to recognize fundamental justice as the Commissioners perceive it on the basis of the testimony and evidence before them. The recommended amounts do not reflect a precise balancing of actual losses; this is now, after many years, a practical impossibility.

1. The Commissioners, with Congressman Lungren dissenting, recommend that Congress establish a fund for the beneficial use of the Aleuts in the amount of $5 million. The principal and interest of the fund should be spent for community and individual purposes that would be compensatory for the losses and in-

juries Aleuts suffered as a result of the evacuation. These injuries, as *Personal Justice Denied* describes, include lasting disruption of traditional Aleut means of subsistence and, with it, the weakening of their cultural tradition. The Commissioners therefore foresee entirely appropriate expenditures from the proposed fund for community educational, cultural or historical rebuilding in addition to medical or social services.

2. The Commissioners, with Congressman Lungren dissenting, recommend that Congress appropriate funds and direct a payment of $5,000 per capita to each of the few hundred surviving Aleuts who were evacuated from the Aleutian or Pribilof Islands by the federal government during World War II.

3. The Commission recommends that Congress appropriate funds and direct the relevant government agency to rebuild and restore the churches damaged or destroyed in the Aleutian Islands in the course of World War II; preference in employment should be given to Aleuts in performing the work of rebuilding and restoring these buildings, which were community centers as well as houses of worship.

4. The Commission recommends that Congress appropriate adequate funds through the public works budget for the Army Corps of Engineers to clear away the debris that remains from World War II in and around populated areas of the Aleutian Islands.

5. The Commission recommends that Congress declare Attu to be native land and that Attu be conveyed to the Aleuts through their native corporation upon condition that the native corporation is able to negotiate an agreement with the Coast Guard which will allow that service to continue essential functions on the island.

Finally, the Commission recommends that a permanent collection be established and funded in the National Archives to house and make available for research the collection of government and private documents, personal testimony and other materials which the Commission amassed during its inquiry.

The Commission believes that, for reasons of redressing the personal injustice done to thousands of Americans and resident alien Japanese, and to the Aleuts—and for compelling reasons of preserving a truthful sense of our own history and the lessons we can learn from it—these recommendations should be enacted by the Congress. In the late 1930's W. H. Auden wrote lines that express our present need to acknowledge and to make amends:

> We are left alone with our day, and the time is short and
>
> History to the defeated
>
> May say Alas but cannot help or pardon.

It is our belief that, though history cannot be unmade, it is well within our power to offer help, and to acknowledge error.